BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LOCAL 2375, AFSCME, AFL-CIO

and

DOUGLAS COUNTY

Case 255
No. 63017
MA-12474

(Paquette alternative work schedule grievance)

Appearances:

Frederic P. Felker, Corporation Counsel, Douglas County, Douglas County Courthouse, 1313 Belknap Street, Superior, Wisconsin 54880, appeared on behalf of Douglas County.

James Mattson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8480 East Bayfield Road, Poplar, Wisconsin 54864, appeared on behalf of Local 2375, AFSCME, AFL-CIO.

ARBITRATION AWARD

Local 2375, AFSCME, AFL-CIO and Douglas County are parties to a collective bargaining agreement which provides for final and binding arbitration of disputes arising thereunder. The Union made a request, in which the County concurred, for the Wisconsin Employment Relations Commission to appoint a member of its staff to hear and decide a grievance over the interpretation and application of the terms of the agreement relating to discipline. The Commission appointed Stuart D. Levitan to serve as the impartial arbitrator. Hearing in the matter was held in Superior, Wisconsin on March 1, 2004; it was not transcribed. The parties submitted written arguments by April 19, and on April 28 waived their rights to file replies. I subsequently requested clarification of certain facts in the record, which the parties supplied on September 8.

ISSUE

The Union states the issue as:

"Did the County violate the terms of the collective bargaining agreement and the long-standing past practice when it unilaterally stopped employees from working an alternative work schedule (four day work week)? And if so, the appropriate remedy is for the Employer to allow employees the option of working alternative work schedule (including a four day work week)."

The County states the issue as:

"Did Douglas County violate the collective bargaining agreement when the 4-day work week alternative work schedule was abolished and employees were offered alternative staring and ending times on a 5-day per week basis? If so, what is the appropriate remedy?"

I state the issue as:

"Did Douglas County violate the collective bargaining agreement when it abolished the 4-day work week for the Child Service Office and imposed a new schedule with a 5-day workweek? If so, what is the appropriate remedy?"

RELEVANT CONTRACT LANGUAGE

ARTICLE 2: MANAGEMENT RIGHTS. The county board possesses the sole right to operate the county and all management rights repose in it unless otherwise limited in the collective bargaining agreement or applicable Federal or State laws.

A To direct all operations of the Department;
B. To hire, promote, schedule and assign employees in positions within the Department;
C. To suspend, demote, discharge and take other disciplinary action against employees, with just cause;
D. To relieve employees from their duties;
E. To maintain efficiency of County operations;
F. To take whatever action is necessary to comply with State or Federal Law;
G. To introduce new or improved methods or facilities;

H. To change existing methods or facilities;
I. To determine the methods, means and personnel by which Departmental operations are to be conducted;
J. To take whatever action is necessary to carry out the functions of the Department in situations of emergency.

. . .

ARTICLE 6: GRIEVANCE PROCEDURE. Section 5. C. Role of the Arbitrator: The Arbitrator shall not add to, subtract from, or vary the terms of this Agreement. All decisions must be rendered in accordance with the language of this Agreement. The decision of the Arbitrator shall be final and binding upon both parties.

ARTICLE 13: WORK DAY – WORK WEEK. Section 1. The work week shall be from 8:00 a.m. to 4:30 p.m. with a one hour unpaid lunch break. The work week shall be five (5) seven and one-half (7-½) hour days, Monday through Friday, for a total of thirty-seven and one-half (37-½) hours per week. The hours of work may be changed by mutual consent of the parties. If it is deemed necessary that the office is held open during the lunch period by the Director of Child Support then the office would be staffed by one (1) employee on a rotating basis.

Section 2. Overtime is not required of employees; however, should an employee be asked to put in additional time as needed to carry out their duties and responsibilities, the employee would be paid overtime pay at the rate of one and one-half (1½) times the regular rate of pay or compensatory time off at the rate of one and one-half (1½) times the number of hours worked at the option of the employee. Compensatory time off shall only be taken upon prior approval of the employee's supervisor. Employees who are called out to work outside the work day – work week as set forth in Section 1 above, shall be paid at the applicable rate for such work performed, but in no case shall they receive less than four (4) hours straight time pay.

Section 3. During a standard work day a ten (10) minute rest period is allowed in the morning and another in the afternoon.

Section 4. ALTERNATIVE WORK SCHEDULE. The department head and the employee may mutually agree to a pattern of work that deviates from the normal scheduling and overtime practices outlined in this Agreement. The

employer shall retain documentation of the Agreement. Either the employer or the employee may revoke such election by giving written notice to the other party at least five (5) work days prior to the effective date of the revocation.

Employees shall have the opportunity to review an alternative work schedule or schedules prior to volunteering for flexible work hours. Alternative Work Schedules may include shifts that are less than seven and one-half (7½) hours or more than seven and one-half (7½) per day.

BACKGROUND

Among its general governmental responsibilities, the County of Douglas maintains and operates a Child Support Office, the regular employees of which are represented by Local Union No. 2375, AFSCME, AFL-CIO. This grievance concerns actions the agency director, Dennis Arras, took to eliminate the option for a popular 4-day workweek featuring 10-hour days.

The parties' 2000-2002 collective bargaining agreement, Section 13.1, provided for a five day work-week of 37.5 hours, with a daily schedule of 8:00 a.m. to 4:30 p.m., and a one hour unpaid lunch period. The agreement also provided that "the hours of work may be changed by mutual consent of the parties."

Attempting to deal with increased client needs due to the impact of Gov. Thompson's W-2 welfare revisions, CSO Director Richard Arras in 2001 concluded that the office should be open before and after the standard hours listed in the collective bargaining agreement. He thereupon sought and obtained Personnel Committee approval to try allowing some employees to work a 4-day workweek, 7:30 a.m. to 5:30 p.m. Seven of the ten investigators in the Child Support Office took this option, and came to believe it benefited both themselves and their clients.

On September 20, 2002, during ongoing collective bargaining for a 2003-2004 agreement, the County proposed adding a section entitled "Alternative Work Schedules" (AWS). This provided, in pertinent part, that the department head and employee "may mutually agree to a pattern of work that deviates from the normal scheduling and overtime practices" found in the agreement, and that either the employer or the employee "may revoke such election by giving written notice to the other party" at least five work days prior to the effective date of revocation. There is no evidence the parties explicitly discussed the impact of this proposal on the existing arrangement in the office.

This AWS provision, which also maintained the "mutual consent" sentence in Section 13.1, was tentatively agreed to on October 8, 2002, and incorporated into the collective bargaining agreement which the parties ratified in April, 2003.

On May 15, 2003, agency director Arras told a staff meeting he was considering eliminating the four-day week. According to his unrebutted testimony, Arras explained that he felt there was not enough client traffic, that the County wanted to standardize the building closing hours for security, and that the 4-day week exacerbated the scheduling difficulties caused by there being "too much leave." Arras asked staff to maintain logs to monitor usage, but by early July only one worker turned hers in and he didn't pursue the others for theirs. By early August, without further consultation, Arras had decided to abrogate the existing arrangement, and on August 20, 2003, issued the following memo:

> TO: ALL STAFF
> FM: DENNIS G. ARRAS, DIR.
> RE: ALTERNATIVE WORK SCHEDULE
>
> For several reasons, the alternative work schedule we have enjoyed for the last two years or so no longer works.
>
> The "four day" work week shall end as of the week ending 10-4-03. I am offering other alternative schedules and they are as follows:
>
> 1. 7:30-4
> 2. 8-4:30
> 3. 8:30-5:00 (this if we get 1 support staff and two investigators)
>
> The Government Center is opening at 7:30 a.m. and closing at 5 p.m. Administration wants the Courthouse open the same hours. (Zoning is open until 5 p.m. daily). The primary reason for standardizing hours being security issues.
>
> According to support staff, there are not enough calls or walk-ins to justify the later hours that come with the 4-day week.
>
> The agency has a large number of senior staff with many weeks of vacation which causes conflicts when less senior staff request vacation time. In addition, with sick time taken and personal days taken, we have had to go with one investigator until 5:30 p.m. when there should have been two on duty, especially Fridays and Mondays.

Under the provisions of the Afscme (sic) contract to be signed 8-21-03 and/or the CWA Contract, I am stating and submitting in writing, that the current alternative work schedule (4-day work week) is terminated effective 10-04-03.

Thereafter, Arras issued the following memo:

ALL STAFF
BELOW IS THE NEW SCHEDULE EFFECTIVE 10-6-03

7:30 – 4 P.M.	8:00-4:30 P.M.
PETERSON	JOHNSTON
PAQUETTE	WAHLQUIST
JOHNSON	LAGESSE
SEVERSON	GOTELAERE
MOEN	
DELUCA	

1/ This list is based upon request and seniority. If there is a need for a change, the person needing the change must arrange for a replacement and notify Pam 24 hours in advance. The times will be noted on the county web site.

2/ Please arrange for your voicemails to contain your hours of operation 1 week in advance of Oct. 6, 2003.

3/ No working through lunches will be allowed unless there is an emergency.

4/ Minimize personal phone calls. I have said this before and am emphasizing it again.

5/ Arrears collections are very important; go after them aggressively.

6/ Make sure the order amount is moved to arrears columns if you are leaving the income withholding in effect to pay the arrears. Review your cases regularly !!!!

7/ Our peo (sic) reconciliation needs to be done by 2007; that does not mean put it off for 3 years. I want a day per week from each investigator by 9-19-03 in writing. You will have no phone calls or appointments on the day you

> select. Look at the peot report I will give each of you next week and determine how many cases you will need to average to get the job done by the end of "04" as the target date.

While the memo is undated, the parties stipulated that Arras sent it on or about August 29 or September 2. On September 11, 2003, the parties executed their collective bargaining agreement for calendar years 2003-2004.

On October 6, the new hours took effect, and all employees were assigned to either the 7:30-4 or 8-4:30 shift. Also on that date, child support investigator Mary L. Paquette grieved Arras' action as a violation of Article 13, stating that, "Dennis Arras arbitrarily and unilaterally removed the alternative work schedule employees in violation of contract, violating the bargaining in good faith concept." As remedy, she sought a return to the four-day work week.

On October 15, Arras denied the grievance, explaining:

> An alternative work schedule must be mutually agreed upon. The pre-existing option of a 4-day workweek was negotiated with the County Board based upon research of customer needs, the availability of staff and minimum security concerns. Those conditions no longer exist as they did 2.5 years ago. Therefore, as Department Manager, I determined the 4-day week was no longer necessary, as it does not meet the needs of the customer or the County.
>
> I do not believe I have violated the contract or the intent of the contract portion regarding alternative work schedules, and deny the grievance. An alternative work schedule is not necessarily a 4-day workweek.
>
> In my opinion, as Manager of the Agency, it no longer worked for a variety of reasons:
>
> 1. Security. The Government Center is closed at 5 p.m., daily, for security purposes and open at 7:30 a.m. The only other office in the courthouse after 4:30 p.m. is Zoning, which closes at 5:p.m.
>
> 2. Lack of customers after hours: The number of personal or telephonic contacts prior to 7:30 a.m. and after 4:30 p.m. has diminished. This according to employees.

3. Senior staff: We have employees with 4-5 weeks of vacation combined with personal time and sick time. There were several instances over the last year or so, where we had insufficient coverage from 4-5:30 p.m., especially on Fridays. In addition, more junior staff had difficulty getting vacation times since senior staff had a Wednesday, Friday or Monday off, then call in sick. This caused problems with scheduled interviews with customers and caused problems with staff that had scheduled time off, could not leave or had not come in, leaving at times, only one investigator and one clerical support to work until 5:30 p.m.

4. There was a minor problem with 4-day workers and holidays; which day do they take off if a holiday was on a Monday and that was a schedule (sic) day off, as an example.

I offered alternative schedules that ran from 7:30 a.m. to 4 p.m.; 8 a.m. to 4:30 p.m. and 8:30 a.m. to 5: p.m. I did not rule out alternative schedules altogether, just different ones to a four-day week, which I felt, did not work as planned any longer. The term "alternate work schedule" does not mean only a four-day week.

On October 15, the Union responded to Arras' denial of the grievance as follows:

You are correct that an alternative work schedule is not necessarily a 4-day work week. The 7 staff members that chose to work the 4-day week, when given the chance, have done so since 01-01-01. At the time we went into bargaining for the 2003-04 contract, it was a well established fact that the 2 work schedules in our office were a 5-day week from 07:30-04:00 or a 4-day week 07:30 to 05:30, with staffers having different days of the week off.

1. Security: There has not been any formal declaration that I am aware of, that states the Government Center and Courthouse are closed at 5:00 p.m. Various community groups have meetings after 5:00 p.m., (see attached), as well as County Board and City Council committee meetings. Security has never been an issue for these functions. In the 33 months that we were on a 4-day week, we never once had any security problems from 04:30-5:30. Had any problems arisen, the Sheriff's Department, and City Police Dept. are in very close proximity. There are also departments in the Government Center that work a 4-day week, in speaking with the current bailiffs/deputies, they would gladly stagger their hours so at least one would be here until 05:30.

2. Lack of Customers: Mr. Arras had requested all staff on the 4-day week to keep track of phone calls, personal contacts etc. Out of 7 staff members that were on the 4-day week, he only chose to question one person, from the support staff, who did not keep track of calls, contacts, etc. and was the one person out of 7 who wanted to go to a 5-day work week. No other staff members working the 4-day week were questioned about the records they kept, including other support staff who did keep extensive records of phone calls and walk-ins, and case work done from 04:30 to 05:30.

3. Senior Staff: This will always be an ongoing problem whether we work a 4-day or 5-day week. There have been many situations in the 22 years I have been here that we have been shorthanded during the holidays, summers etc. We have made it through just fine with no problems. Every department with long term employees, and new staff must deal with this problem.

4. Holidays: For the few times a year it occurs, it always worked out. Everyone has to put in the same # of hours per week, even though a holiday falls during that week.

5. Summary: This agency has always taken pride in the fact we are here to serve the public, enforce the laws, and help families maintain a decent lifestyle. Since the welfare system was dismantled in Wisconsin, the single parents that we serve have entered into the job market. In may cases they cannot afford to take time off to report to the child support office. Giving them the extra hours at the beginning and the end of the day is the least we can do to accommodate their schedules. Being flexible often begets better cooperation from parents, CP's or NCP's.

On October 23, County Administrator Steve Koszarek wrote the Union as follows:

We have reviewed your grievance that the contract was not followed when work hours were changed form a 4-day workweek. At issue seems to be the wording "the hours of work may be changed by mutual consent of the parties".

The contract sets the work day as 8:00 to 4:30 five days a week. It allows a change based on the mutual consent of both parties. Once there is no longer mutual consent, the workday would revert to 8:00-4:30 five day per week.

We believe the department manager acted within the guidelines of article 13 and article 2. We are also aware that all employees were notified of this change back to five days a week on August 20, 2003. Consequently, we believe the grievance is not timely and is without merit. We, therefore, deny the grievance.

Koszareck wrote the Union again on November 4, as follows:

I have met with staff regarding the discussions held with the Union on November 3, 2003. I have concluded that there is no contract violation and that the grievance must therefore be denied. In regards to the Union's issue that there has been a past practice that cannot now be changed, the language in the contract is clear that alternative schedules must be by mutual agreement. The alternative work schedule language added to the 2003 contract did not change the existing contract language requiring mutual agreement for a change of the work day/work week provisions in Article 13. It is the County's position that management has the right and responsibility to efficiently manage operations. The Child Support Manager's action – making the change back to a 5-day workweek, is appropriate and was based upon his evaluation of his program responsibilities. Further it does not violate the contract or past practice.

You may advance this grievance to the next step of the grievance procedure as provided for in your working agreement.

Further facts are as discussed below.

POSITIONS OF THE PARTIES

In support of its position that the grievance should be sustained and the remedy ordered, the Union asserts and avers that the employer did not bargain in good faith when it agreed to the new language on alternative work schedules and then unilaterally and arbitrarily ended the important and popular 4-day week only days after the new contract was signed. The Union also states that the new agreement places a limitation on the management rights clause, in that the Employer no longer has an unlimited right regarding the determination of a unit employee's work schedule; the new agreement certainly implies the ability of bargaining unit employees to have the opportunity to work alternative work schedules. The Union further states that the department head who cancelled the four-day work week did not have adequate information to support his unilateral decision, nor did he appreciate the many advantages (both to the public and the employees) of the four-day work week.

In support of its position that the grievance should be denied, the County asserts and avers that it has the management right under the collective bargaining agreement to schedule work shifts, and that the bulk of the Union brief was devoted to disagreeing with the reasons the department head gave for his actions. However, at issue is not the wisdom of management's decision, but rather whether management had the inherent or contractual right to make the decision. As to the Union's allegations of bad faith bargaining, the County states that there was absolutely no testimony that the specific issue of the 4-day work week was discussed at all during bargaining. The County also rejects any claim as to an established past practice, asserting that the former availability of then 4-day work week was under the contractual language for mutually agreed upon alternative work schedules, and bore no separate indicia of permanency. Because there is simply no evidence that the County had bargained in bad faith or otherwise abandoned its inherent and contractually established management right to withdraw its consent to a specific alternative work schedule, the County concludes, the grievance should be denied.

DISCUSSION

This grievance involves one of the most important conditions of employment, the hours of work. The grievant is Mary Paquette, on behalf of herself and the other Child Services Office investigators whose optional 10-hour day, 4-day workweek was abolished and replaced with standardized a 7.5 hour, 5 day workweek.

It was the CSO Director, Richard Arras, who initiated the 4-day workweek in 2001, as he sought to deal with the impact of Gov. Thompson's W-2 welfare revisions. Finding it "very apparent that we needed extended hours to cover the public before 8 and after 4:30," he got Personnel Committee approval to try allowing some employees to work a 4-day workweek, 7:30 a.m. to 5:30 p.m. Seven of the ten employees in the Child Support Office took this option, and came to believe it benefited both themselves and their clients. Arras, however, later became dissatisfied with this arrangement, and also concerned that the then-current collective bargaining agreement might not allow for it. In May 2003 he alerted staff to his concerns, and in August 2003 he announced the 10-hour day (and thus also the 4-day workweek) would be eliminated, effective in early October. In its place, Arras first offered the unit the choice of 7:30-4:00, 8-4:30 or 8:30-5, (the last only if two investigators and a support staff were available), then eliminated that last shift in the schedule which he announced in August 2003 and implemented in early October.

In seeking an award ordering the return to the 4-day workweek option, the Union has raised several objections to Arras' action, with varying degrees of success. As the County correctly notes, the Union focuses its argument on the wisdom of Arras's action.

Union witnesses testified credibly that the 10-hour day was good for clients, and that the 4-day workweek was good for staff. Whether those conditions help resolve this grievance remains to be seen.

I agree with the Union that the 10-hour day made it easier and less expensive for clients to get to downtown Superior before the office closed. With Douglas County's geography and labor market, closing the office at 4:30 p.m. has meant some clients have had to take some kind of leave to do their business with the CSO –- leave they didn't have to take when the office was open till 5:30 p.m., as under the 10-hour day, 4-day workweek.

I further agree with the Union that the 4-day workweek which came from the 10-hour day was a great benefit to employees in the unit, even at the price of four long days. And it was especially so for the several investigators with the 3-day weekends. It is no surprise that seven of the ten affected workers took the opportunity for the 4-day workweek for themselves.

The County does not argue strenuously that Arras' decision was a good one, but says that's besides the point: "It is not the wisdom of management's decision which is at issue here but … (its) right to make that decision in the first place."

The County is wise not to argue in support of Arras' action on the merits, because the new schedule he imposed seems to combine the worst of all worlds -- service cuts to clients (through the loss of office hours) *plus* the loss of a valuable employee benefit.

Arras testified that it was "very apparent" he needed to extend office hours, both earlier than 8:00 a.m. *and after 4:30 p.m.* Yet the schedule he imposed closes the CSO office at 4:30, frustrating the clear and present need for the later office hours that he testified to.

Arras' new schedule is also inconsistent with the security concerns he raised in his August 20 memo and his hearing testimony. At hearing, Arras explicitly stated that the county wanted to standardize a 5:00 p.m. close in both the Government Center and Courthouse for security reasons. In the memo, he also cited specific problems with the then-optional 5:30 p.m. close, but raised no concerns about a 5:00 p.m. close. There is no security-concern justification in the record for closing the CSO office any earlier than 5:00 p.m. 1/

1/ The Union also challenges the County's security justification, noting there have never been any safety incidents affecting the unit in over two decades, and that there are other offices with alternative schedules immediately adjacent to the CSO. Arras testified that county administrators sought a broad 5 p.m. closing time for the offices, a reasonable policy that is not invalidate by the occasional after-hours use of the facility. The fact that staff of the District Attorney's office might work different

hours, or that a public meeting might occasionally be held, does not so negate the county's claimed security interest so as to invalidate the newly imposed schedule. And while the Union has volunteered that the bailiffs and/or deputies "would gladly stagger their hours" to provide coverage until 5:30 p.m., there is nothing in the record to establish that the bailiffs and deputies can independently make such a scheduling arrangement, or that it is proper for the CSO investigators to request that they do so.

The Union also complains that by eliminating "the important and popular" arrangement only one month after agreeing to the new Alternative Work Schedule language (Sec. 13.4), the County had engaged in bad faith bargaining. It is easy to see why the Union is upset, and why it finds Sec. 13.4 consistent with preserving the 4-day workweek.

First, as the language obviously put alternative work schedules on a firmer contractual basis, the Union could reasonably have understood that the County's intent was to have the then-existing alternative work schedule (i.e., the 4-day workweek) continue.

Also, the new 13.4 explicitly authorizes days longer than 7.5 hours, again providing the County's explicit endorsement of the key condition in the 4-day workweek, namely the 10-hour day. The Union could rightly assume that by proposing language *authorizing* a 10-hour day, the County *supported* a 10-hour day.

The unit had 10-hour days under language which did *not* explicitly authorize them, but lost that option upon adoption of language which *did* explicitly authorize them. It is easy to understand why the Union here sees an inherent conflict between the County's actions and the collective bargaining agreement, and why it finds bad faith at the heart of the County's conduct.

But while the Union is further correct that the implementation of the new work schedule occurred on October 6, 2003, less than a month after the September 11 execution of the agreement that contained the new AWS language, this by itself is benign. The timing of the implementation was as it was only because the employees were into their summer vacation schedule by the time Arras decided to abolish the four-day week; the *announcement* of the coming abrogation had been well *before* the execution of the new agreement, in Arras' memo of August 20 and his subsequent memo with the specific assignments.

Here is the time-line of relevant events:

Sept. 20, 2002 Option for 4-day workweek in effect. County proposes new Alternative Work Schedule language for 2003-2004 collective bargaining agreement;

October 8, 2002 Parties agree to new AWS language;

April, 2003 Parties ratify 2003-2004 collective bargaining agreement containing AWS language as new Section 13.4;

May 15, 2003 Arras tells staff he is considering eliminating 4-day workweek

August 20, 2003 Arras issues memo changing schedules effective October 6

August 29, 2003 Arras issues memo with new assignments

September 11, 2003 Parties execute 2003-2004 collective bargaining agreement

October 6, 2003 New hours take effect; Paquette grieves

The Union simply cannot contend that Arras' action on October 6 took it by surprise. He told a staff meeting in mid-May that he was thinking of changing the hours, and why. He asked for their help analyzing the situation, through the submission of work logs – but by early July, only one worker had submitted hers, and Arras didn't bother to ask again. In August, citing both the existing and imminent collective bargaining agreements, Arras announced the abrogation of the existing AWS and the implementation of a new work schedule effective October 4, 2003. And on October 6, he made it so.

Finally, the Union is wrong to believe that the new 13.4 codified and enshrined inviolate the 4-day workweek which had existed under the old language. It didn't.

There are three provisions in the 2003-204 collective bargaining agreement which pertain to employee schedules. Article 2, Paragraph B, establishes that "unless otherwise limited in the collective bargaining agreement," the County has the "sole right to … schedule and assign employees…" Article 13, Section 1, is just such a limitation, setting a specific schedule (8:00 a.m. to 4:30 p.m., with a one-hour unpaid lunch break), and providing that the hours of work "may be changed by mutual consent of the parties." Article 13, Section 4 acknowledges Alternative Work Schedules, which may be either more or less than 7.5 hours per day, and which may be revoked by either the employer or an employee "by giving written notice to the other party at least five (5) work days prior to the effective date of the revocation."

The Union contends that Section 13.4 "places a limitation on the management rights clause," namely that "no longer does the County have an unlimited right" to set work

schedules because the represented employees "now ... have an expanded right to work alternative schedules."

To be sure, the new 13.4 formally acknowledges the prospect of alternative work schedules, in a manner beyond that of the existing "mutual consent" sentence in the first section of this article. But ultimately the Union is wrong -- absent mutual consent between the department head and employee to deviate "from the normal scheduling and overtime practices outlined in this Agreement," the standard workweek is Monday-Friday, 8:00 a.m. to 4:30 p.m.

Arras' decision to unilaterally abrogate the 4-day workweek/10-hour day schedule cut services to County clients, adversely affected employee hours, damaged workplace morale, and produced no benefit for employee or client security. But through his discussion on May 15, and the memoranda of August 20 and August 29, Arras did give timely and sufficient notice under both Section 13.1 and 13.4 that he was withdrawing the County's consent to the change in hours. Thus, whether or not the action was one Arras *should* have taken, it was one which he *could* have taken.

By his memo of August 29, issued more than five weeks before the implementation of the new schedules, Arras complied with the contractual requirement of Sec. 13.4 for written notice at least five (5) work days prior to the effective date of the revocation of an alternative work schedule. He thus had the power to take the action he did.

Accordingly, on the basis of the collective bargaining agreement, the record evidence and the arguments of the parties, it is my

AWARD

That the grievance is denied.

Dated at Madison, Wisconsin, this 24th day of September, 2004.

Stuart D. Levitan /s/
Stuart D. Levitan, Arbitrator

SDL/gjc
6726